

**Chapter 220**  
**Board of Selectmen**  
**Street Opening Regulations**  
*[History: Adopted August 15, 2007]*

**220-1. Purpose**

A. The purpose of this regulation is to protect the safety and general welfare of the inhabitants of the town of Nantucket by creating standards, guidelines, specifications and administrative process to govern and regulate street openings.

B. The following regulations shall apply to all excavators, including but not limited to any person, contractor, developer, partnership, corporation, limited liability corporation, municipality, special district, or other governmental entity, who for any reason cuts, disturbs, or otherwise defaces any public right-of-way maintained or not maintained. Excavators shall obtain a “Street Opening Excavator’s License” from the Department of Public Works in accordance with these requirements and a “Street Opening Permit” for specific work projects to be undertaken by each excavator licensed hereunder.

C. The excavator acquiring a permit must be familiar with and at all times shall observe and comply with all federal and state laws, local bylaws and regulations pertaining to street openings.

These regulations are adopted under the authority of Massachusetts General Law Chapter 82A, section 2 and the Home Rule Amendment to the Massachusetts Constitution.

**220-2. Definitions**

The following words used in these regulations shall have the following meaning, unless a different meaning is clearly apparent from the language or context:

“Board of Selectmen or Selectmen” – the duly elected members of the Board of Selectmen for the Town of Nantucket, Massachusetts.

“Company” -- natural gas pipeline company, petroleum or petroleum products pipeline company, public utility company, cable television company, and municipal utility company or department that supply gas, electricity, telephone, communication or cable television services or private water companies within the city or town where such excavation is to be made.

“Description of excavation location” -- such description shall include the name of the city or town, street, way, or route number where appropriate, the name of the streets at the nearest intersection to the excavation, the number of the buildings closest to the excavation or any other description, including landmarks, utility pole numbers or other information which will accurately define the location of the excavation.

“Emergency” -- a condition in which the safety of the public is in imminent danger, such as a threat to life or health or where immediate correction is required to maintain or restore essential public utility service.

“Excavation” -- an operation for the purpose of movement or removal of earth, rock or the materials in the ground including, but not limited to, digging, blasting, augering, backfilling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling in, jacking in, trenching, tunneling and demolition of structures, excluding excavation by tools manipulated only by human power for gardening purposes and use of blasting for quarrying purposes.

“Excavator” -- any entity including, but not limited to, a person, partnership, joint venture, trust, corporation, association, public utility, company or state or local government body which performs excavation operations.

“Premark” -- to delineate the general scope of the excavation or boring on the paved surface of the ground using white paint, or stakes or other suitable white markings on nonpaved surfaces. No premarking shall be acceptable if such marks can reasonably interfere with traffic or pedestrian control or are misleading to the general public. Premarking shall not be required of any continuous excavation that is over 500 feet in length.

“Public Works Department” – a department of the Town of Nantucket, Massachusetts

“Public Works Director” – the duly appointed head of the Public Works Department of the Town of Nantucket, Massachusetts

“Safety zone” -- a zone designated on the surface by the use of standard color-coded markings which contains the width of the facilities plus not more than 18 inches on each side.

“Standard color-coded markings” -- red - electric power lines, cables, conduit or light cables; yellow - gas, oil, street petroleum, or other gaseous materials; orange - communications cables or conduit, alarm or signal lines; blue - water, irrigation and slurry lines; green - sewer and drain lines; white - premark of proposed excavation.

“Street Opening Permit” – a permit required by the Town of Nantucket for the opening or cutting of any street, road, sidewalk or bicycle path of the Town and County of Nantucket

“System” -- the underground plant damage prevention system as defined in section 76D of chapter 164.

### **220-3. General Requirements**

A. Only properly licensed individuals, companies or corporations may apply for a street opening permit in accordance with “B” below.

B. An excavator license may be issued to a individual, company or corporation which: can demonstrate to the Public Works Director possession of a working knowledge of excavation construction; can access the construction equipment necessary to professionally complete a street

opening; possesses the required insurance indemnifying the Town of Nantucket from any and all liability which may arise from a street opening; have access to safety equipment as required by the Manual of Uniform Traffic Control Devices; has the ability to obtain the required performance bond; has paid a \$200 annual street opening excavator license fee.

C. Prior to the issuance of a street opening excavator license, an applicant shall provide the Town of Nantucket with a \$10,000 annual performance bond. Should the licensee fail to meet performance standards, the bond will be used by the Town to correct any deficiency(s). The license and the performance bond shall run concurrently. The license is issued annually.

D. Failure by the permittee to comply with conditions of the Street Opening Permit or Street Opening Excavator License may result in revocation of the permit by the Director of Public Works or his designee.

E. The Board of Selectmen may hear any appeal of a decision of the Director of Public Works to revoke or not issue a street opening license or permit.

F. The Manual of Uniform Traffic Control Devices (MUTCD) shall be used as the standard in establishing a work zone to provide for public safety including but not limited to proper signage, barricades, and third party detail(s).

G. Permittee must provide written notice to the Department of Public Works, Police and Fire Departments, Town Administration and the Nantucket Regional Transit Authority a minimum of five (5) days in advance of the proposed excavation.

H. A copy of the permit shall be kept at the work site and shall be available to designated Town officials upon request.

I. Streets shall not be unnecessarily obstructed, and must be made safe and convenient for use by pedestrians, bicyclists and motor vehicles during excavation. No street shall be closed, nor detour established, without the approval of the Department of Public Works, the Police Department and the Fire Department.

J. All surplus and/or unacceptable excavated materials shall be removed from the job site by the excavator to an approved disposal site immediately following completion of the work. The excavation site shall be maintained in a clean and safe condition at all times. Sidewalks and streets shall be cleaned and opened to traffic at the end of each working day, unless otherwise authorized by the Department of Public Works. Access to properties adjacent to, or in the immediate area of, the excavation site is to be maintained during the excavation work. The removal and disposal of materials, including pavement, is the responsibility of the permittee. This shall be achieved in such a manner to minimize interference with pedestrian and vehicular traffic.

#### **220-4. Specifications of Excavations**

A. Compaction: all open trenches must be backfilled with dry clean fill. Backfilling of the trench will be done in two foot lifts and compacted to a level within 16 inches of the roadway surface. In the last 16 inches of the backfill process the excavator shall place a 6 inch lift of  $\frac{3}{4}$  inch

processed gravel, followed by compaction. A second 6 inch lift of ¾ inch processed gravel shall be placed and compacted. The final 4 inch lift shall be comprised of cold mixed asphalt rolled or compacted to form a smooth transition from the undisturbed roadway surface onto and off the patch. This constitutes the temporary asphalt patch. Prior to installation of the temporary patch the excavator shall sawcut the asphalt edges of the street opening, providing a clean vertical face, free from surface deformation.

B. The DPW may, under certain conditions or in specific locations, require the use of flowable fill to assure proper compactions of trenches.

C. A permanent full depth Type I asphalt patch shall be placed within 30 days of the installation of the temporary patch. At a minimum the permanent patch will be comprised of two, 2-inch lifts compacted separately. The patch shall provide a smooth transition, with no noticeable depression or rise above or below the existing road surface. The permittee shall be responsible for maintaining the permanent patch for a period of one year from the date of the installation of the patch. Should the patch fail at any time within the one year period, the permittee shall remove and replace the patch. During winter months, Type I asphalt may not be available, in such cases the permittee shall place a cold mix asphalt patch and maintain the patch as required, or directed, until such time as the permanent patch may be placed.

#### **220-5. Bicycle Paths**

Cuts in bicycle paths are to be avoided. Boring beneath the bicycle path surface is to be used for the installation of all utilities whenever possible. If not possible, as may be determined by the DPW Director, or his designee, the opening shall be corrected in the manner described in section 220-4.

#### **220-6. Traffic Control**

A. If the specified work will disrupt traffic flow, it is the responsibility of the permittee to provide third party detail, signage and/or traffic control devices as required by Manual of Uniform Traffic Control Devices (MUTCD), as approved by the Chief of Police or his designee.

B. Every attempt shall be made by the permittee to keep at least one lane of the street open for vehicular traffic during the work activity. In cases where this is not possible, the permittee must obtain a Town of Nantucket Street Closing Permit at least twenty-four (24) hours in advance of such closure and to provide signs designating detour routes as approved by the Director of Public Works or his designee.

#### **220-7. Street Openings Prohibitions**

A. Street openings are only allowed between April 15<sup>th</sup> and November 15<sup>th</sup> with the exception of emergency work as defined herein. Construction may not begin before 7:30 am on any day.

B. Street opening permits shall not be issued for any street within 3 years of its having been re-surfaced. Justified emergency work, as determined by the Director of Public Works or his designee, may be exempted provided that the permanent patch shall be placed using infrared paving technology.

#### **220-8. Inspections**

The DPW Director or his designee may reject defective or inferior materials, defective or poor workmanship and may suspend work until such time as the excavator shall correct the situation in question, the corrective work being subject to approval by the DPW Director or his designee.

#### **220-9. Emergency Permits**

Nothing in this regulation shall be construed to prevent such excavations as may be necessary for the preservation of life or property; or, for the location of disruption in conduit or pipe; or for making repairs, provided that the person making such excavation shall apply to the Town for such a permit on the first working day after such work is commenced. Before any excavation work is started, the person or utility excavating must contact all agencies as identified herein.

#### **220-10. Indemnification**

A. A permittee shall, at all times during the work, indemnify and hold harmless the Town and County of Nantucket and its agents and employees from all actions, claims, demands, liabilities, losses, or damages by reason of or in connection with the work of the permittee or excavator.

B. Before making any excavation on a public way, the applicant shall give notice to the public utility companies in accordance with Massachusetts General Law Chapter 82, section 40 as amended. In addition, at least 72 hours before commencing work, the following agencies must be notified: Department of Public Works, Fire Department, Police Department, Wannacomet Water, School Department, Dig Safe, NRTA (in season), the electric, telephone and cable utilities.

#### **220-11. Enforcement**

A. It shall be the duty of the Department of Public Works and the Police Department to enforce the provisions of these regulations.

B. Any police officer of the Town may utilize without limitation the non-criminal disposition procedure as specified in MGL c. 40, section 21D; Chapter 1, Article II, section 127-2.1 of the Code of the Town of Nantucket to enforce these regulations.

C. The penalties for violation of the regulations shall be \$300 per violation. Each violation shall be a separate charge. The penalty shall be in addition to any other penalty that may apply, including revocation of permit if one has been obtained.

#### **220-12. Permit provisions**

A permit issued pursuant to this Chapter 220 shall include the following provisions:

A. A trench shall not be excavated unless the requirements of sections 40 to 40D, inclusive, of chapter 82, and any accompanying regulations, have been met and this permit is invalid unless the requirements have been complied with by the excavator applying for the permit including, but not limited to, the establishment of a valid excavation number with the underground plant damage prevention system as provided in section 76D of chapter 164.

B. Trenches may pose a significant health and safety hazard. Pursuant to section 1 of chapter 82, an excavator shall not leave any open trench unattended without first making reasonable efforts to eliminate any recognized safety hazard that may exist as a result of leaving the open trench

unattended. Excavators should consult regulations promulgated by the department of public safety in order to familiarize themselves with the recognized safety hazards associated with excavations and open trenches and the procedures required or recommended by the department to eliminate safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry.

C. Persons engaging in any trenching operation shall familiarize themselves with the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et. seq., entitled Subpart P “Excavations”.

D. Excavators engaging in any trenching operation who utilize hoisting or other mechanical equipment subject to chapter 146 shall only employ individuals licensed to operate said equipment by the department of public safety pursuant to said chapter 146 and this permit shall be presented to the licensed operator before excavation is commenced.

E. By applying for, accepting and signing this permit, the applicant hereby attests to the following: (i) that he has read and understands the regulations promulgated by the department of public safety with regard to construction related excavations and trench safety, (ii) that he has read and understands the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et. seq., entitled Subpart P “Excavations”, and (iii) that he is aware of and has, with regard to the proposed trench excavation on private property or proposed excavation of a city or town public way that forms the basis of his permit application, complied with the requirements of sections 40 to 40D, inclusive, of chapter 82 and with the requirements set forth in this chapter.

F. This permit shall be posted in plain view on the site of the trench.

Nothing in this Chapter 220 shall be construed or applied to contravene the provisions of Massachusetts General Laws Chapter 164, 165, 166 and 166A concerning excavation of a lane, highway or way by a public utility.

#### **220-14. Severability**

If any provisions or any portion thereof contained in these regulations is held to be unconstitutional, invalid or unenforceable, the remainder of the regulations or portions thereof shall be deemed severable, and shall not be affected and shall remain in full force and effect.

#### **220-15. Effective Date**

This regulation shall take effect September 1, 2007.